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OFFICE OF PETITIONS

In re Patent No. RE38,787
Issued: August 30, 2005
Reissue of Patent No. 5,761,621
Issued: June 2, 1998
Application No. 09/392,676
Filed: September 8, 1999
Attorney Docket No. 740301-411

ON PETITION

This is a decision on the request for reconsideration of the decision dismissing the petition under 1.377 petition, filed December 10, 2010, to accept and record the 11 ½ year maintenance fee for the above-identified patent.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted.

The patent upon which the above-identified reissue patent was based, Patent No. 5,761,621, issued on June 2, 1998. The first maintenance fee (3 ½ year) on Patent No. 5,761,621 was paid timely on November 6, 2001. On August 30, 2005, Reissue Patent No. RE38,787 was issued. The time table for payment of maintenance fees for a reissue patent is the same as the time table for payment of the original patent upon which the reissue patent was based. The second maintenance fee (7 ½ year) on Reissue Patent No. RE38,787 was paid timely on November 11, 2005.

Petitioner has explained that on June 1, 2010, the 11 ½ year maintenance fee was paid in RE40,540, which is a divisional of RE38,787. As stated in MPEP 1415.01 (in pertinent part):

In some instances, more than one reissue patent will be granted to replace a single original patent. The issuance of more than one reissue patent does not alter the schedule of payments of maintenance fees on the original patent. The existence of multiple reissue patents for one original patent can arise where multiple divisional reissue applications are filed for the same patent, and the multiple applications issue as reissue patents (all to replace the same original patent). In addition, a divisional application or continuation application of an existing reissue

application may be filed, and both may then issue as reissue patents. In such instances, 35 U.S.C. 41 does not provide for the charging of more than one maintenance fee for the multiple reissues. Thus, only one maintenance fee is required for all the multiple reissue patents that replaced the single original patent. The maintenance fee must be directed to the latest reissue patent that has issued.

Accordingly, no 11 ½ year maintenance fee is due for RE38,787 because the 11 ½ year maintenance fee was paid in the latest reissue patent that has issued, RE40,540.

Pursuant to petitioners' authorization, deposit account no. 02-2135 will be refunded the \$4,240.00 submitted with the present reconsideration petition.

A courtesy copy of this decision will be mailed to the address listed on the petition. Until appropriate instructions are submitted, all future correspondence regarding this patent will be directed solely to the correspondence address of record.

Further correspondence with respect to this matter should be delivered through one of the following mediums:


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Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.


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